

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 1196(Hill) – As Amended June 20, 2016

SENATE VOTE: 38-0

SUBJECT: Bureau of Real Estate: Bureau of Real Estate Appraisers

SUMMARY: Adds a sunset review date for the Bureau of Real Estate (CalBRE) and Bureau of Real Estate Appraisers (BREA); authorizes the Real Estate Commissioner (Commissioner) to suspend the license of a real estate licensee for specified reasons; requires the CalBRE to notify a person whose license is subject to suspension of his or her right to elect to have the issue of the suspension heard; requires that the suspension be rescinded and the license reinstated to its status prior to the suspension if the plea of guilty is withdrawn by the licensee; requires an applicant for a Real Estate Appraiser's license to complete a BREA-approved course and examination that tests the applicant's knowledge of state and federal laws relating to the practice of appraising; and makes other technical changes.

EXISTING LAW:

- 1) Establishes the Real Estate Law, administered by the CalBRE, within the Department of Consumer Affairs (DCA), to license and regulate real estate salespersons, brokers, and mortgage loan originators. (BPC Section 10000, *et seq.*)
- 2) Provides that the Real Estate Commissioner (Commissioner) may revoke or suspend a real estate license who entered a plea of guilty or nolo contendere to, or was found guilty of, or convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, after the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal. (BPC Section 10177(b))
- 3) Establishes the Real Estate Appraiser's Law, administered by the BREA within the DCA, to license and regulates real estate appraisers. (BPC Section 11300, *et seq.*)
- 4) Requires the BREA Bureau Chief to adopt regulations governing the process and procedures for renewal of a license to include, but not be limited to, continuing education (CE) requirements, which will be reported on the basis of four-year CE cycles. (BPC Section 11360)

THIS BILL:

- 1) Adds a four year sunset review date to the CalBRE and BREA.
- 2) Provides the Commissioner the authority to suspend the license of a real estate licensee who has entered into a guilty plea for a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee.
- 3) Requires the CalBRE to notify person whose license is subject to suspension of his or her right to elect to have the issue of the suspension heard.

- 4) Requires that the suspension be rescinded and the license reinstated to its status prior to the suspension if the plea of guilty is withdrawn by the licensee.
- 5) Requires an applicant for a Real Estate Appraiser's license to complete a BREAA-approved course and examination that tests the applicant's knowledge of state and federal laws relating to the practice of appraising.
- 6) Makes other technical changes.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "This bill is necessary to add sunset dates for CalBRE and BREAA in order to ensure oversight over the real estate and appraiser profession. The health, safety, and welfare of consumers are protected by a well-regulated real estate and appraiser profession. CalBRE and BREAA have shown over the years a strong commitment to improve the Bureaus' overall efficiency and effectiveness and has worked cooperatively with the Legislature and this Committee to bring about necessary changes. While the Bureaus need to review some of its enforcement and licensing practices, CalBRE and BREAA should both be given a four-year sunset date so that the Committee may review once again if the issues and recommendations in the background paper and others of the Committee have been addressed."

Background. *Joint Oversight Hearings and Sunset Review of the DCA Licensing Boards.* In March of 2016, the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee (Committees) conducted multiple joint oversight hearings to review 11 regulatory boards within the DCA and one regulatory entity outside of the DCA. The sunset bills are intended to implement legislative changes recommended in the respective background reports drafted by the Committee staff for the agencies reviewed this year.

The Sunset Review Process. The sunset review process provides a formal mechanism for the DCA; the Legislature; the regulatory boards, bureaus and committees; interested parties; and stakeholders to make recommendations for improvements to the authority of consumer protection boards and bureaus. This is performed on a standard four-year cycle and was mandated by SB 2036 (McCorquodale), Chapter 908, Statutes of 1994. Each eligible agency is required to submit to the Committees a report covering the entire period since last reviewed that includes, among other things, the purpose and necessity of the agency and any recommendations of the agency for changes or reorganization in order to better fulfill its purpose. During the sunset review hearings, the Committees take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency is allowed to sunset unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. With respect to the CalBRE and the BREAA, the provisions governing these bureaus would not be repealed if the sunset date is not extended; rather, the sunset date serves to subject the bureaus to review by the appropriate policy committees on a regular basis.

Background on the CalBRE. Real estate licensing in California commenced in 1917. CalBRE is the state entity currently charged with responsibility to enforce the Real Estate Law, the

Subdivided Lands Act, and the Vacation Ownership and Time-share Act of 2004. CalBRE's programs are in place to satisfy the Bureau's statutorily mandated obligations of licensing and regulating salespersons, brokers, mortgage loan originators, real estate and prepaid listing service licensees, reviewing and approving subdivision and time share offerings, and approving CE and pre-license courses. Within the framework of requirements of Division 4 of the BPC and the regulations of the Commissioner as contained in the California Code of Regulations, each of CalBRE's programs contribute toward satisfying its mission of protecting and serving the interests of the public in real estate transactions and providing related services to the real estate industry. Specifically, BPC Section 10050 requires the Commissioner to enforce all laws commencing with BPC Section 10000 and BPC Section 11000 in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees.

Governor's Reorganization Plan No. 2. In 2012, Governor Brown submitted a reorganization plan to the Legislature. As a result, on July 1, 2013, CalBRE became a Bureau within the DCA moving from the independent Department of Real Estate (DRE). AB 1317 (Frazier), Chapter 352, Statutes of 2013, enacted the statutory changes necessary to reflect the changes in law made by the Governor's Reorganization Plan No. 2, including moving the former DRE from under the jurisdiction of the former Business, Transportation, and Housing Agency to become the current CalBRE under the DCA within the Business, Consumer Services, and Housing Agency.

With respect to its core functions, CalBRE currently licenses 405,985 persons in California. Licensed salespersons (265,645) outnumber licensed brokers (136,232) nearly two to one. Of the 402,000 real estate licensees, over 23,600 have a Mortgage Loan Originator (MLO) endorsement that allows the licensee to originate residential mortgage loans. Last fiscal year, CalBRE issued over 25,000 new licenses and renewed over 79,000. CalBRE's enforcement efforts resulted in 185 license denials, 705 licensing disciplinary actions (revocations, surrenders, suspensions and public reprovals) and 62 Desist and Refrain Orders. Moreover, CalBRE issued over 2,350 final public reports, which translated to 30,641 new housing units being offered for sale in California in FY 2014/2015.

The CalBRE's mission is: "to safeguard and promote the public interests in real estate matters through licensure, regulation, education and enforcement."

CalBRE Licensee Suspension. Currently, BPC Section 10177(b) is written in such a way that it requires "the time for appeal" to elapse on a guilty plea before CalBRE can use it for disciplinary action. CalBRE has seen instances where major criminal cases involving real estate fraud have taken years to work their way through federal and state criminal courts. In these cases, CalBRE has seen licensees who were defendants plead guilty relatively early in the process as part of a plea bargain that furthers the prosecution of other defendants. Those guilty pleas may not result in a conviction for months, if not years, as the case against the other defendants proceeds. As presently written in statute, that guilty licensee (who has entered his or her own voluntary and knowing plea) may continue to practice real estate.

The ability for the CalBRE to take swift action against a licensee and promote public health and safety appears to be limited by this section of statute. Without the authority to suspend a license from a real estate licensee who voluntarily enters a guilty plea to a felony or substantially related crime, real estate licensees are able to continue to practice real estate. This bill provides the Commissioner authority to suspend the license of a real estate licensee who has entered into a

guilty plea for a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

Background on the BRE A. In 1989, Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act was adopted by congress mandating states to license and certify real estate appraisers who appraise property for federally related transactions. The federal law was enacted as a result of the savings and loan crisis. In response to the federal mandate, the California Legislature enacted the Real Estate Appraisers Licensing and Certification Law in 1990 (AB 527, Chapter 491, Statutes of 1990). The Office of Real Estate Appraisers (OREA) was established within the Business, Transportation and Housing Agency, and charged with developing and implementing a real estate appraiser licensing and certification program compliant with the federal mandate. In 2012, Governor Brown submitted a reorganization plan to the Legislature. As a result, on July 1, 2013, OREA became the BRE A within DCA.

The BRE A, which is entirely funded by licensing fees, is a single program comprised of two core components, licensing and enforcement. The Licensing Division implements the minimum requirements for licensure, according to criteria established by the federal government and California law, to ensure that only qualified persons are licensed to conduct appraisals in federally related real estate transactions. Applicants must meet minimum education and experience requirements and successfully complete a nationally approved examination. The Licensing Division also registers Appraisal Management Companies (AMC) in compliance with California law. The Enforcement Division investigates the background of applicants, licensees, and AMC registrants to ensure they meet the standards for licensure. The Enforcement Division also investigates complaints of violations of California law and national appraisal standards filed against licensed appraisers and registered AMCs.

BRE A is responsible for the accreditation of educational courses and providers for real estate appraisers. BRE A has reviewed and approved over 1,800 pre-licensing and CE courses. In addition to the real estate appraisal related courses offered by California's community colleges and universities, over 70 proprietary schools provide appraisal education.

Federal Oversight of the BRE A. The following entities are not part of BRE A, but they have influence over BRE A and its operations at the federal level:

- 1) Appraisal Subcommittee: The Appraisal Subcommittee (ASC) was created in 1989 pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The ASC's role as an independent federal institution is to generally oversee the real estate appraisal process as it relates to federally regulated transactions. More specifically, the ASC reviews each state's compliance with federal requirements for licensed appraisers and appraisal management companies and can take action in the case of non-compliance; maintains a national registry of approved appraisers; and oversees the Appraisal Foundation.
- 2) Appraisal Foundation: The Appraisal Foundation (Foundation) is a non-profit organization that works to advance professionalism for appraisers through the promulgation of standards, appraiser qualifications, and guidance regarding appraisal methods and techniques. The Appraisal Standards Board within the Foundation determines and maintains the Uniform Standards of Professional Appraisal Practice (USPAP) which all states must enforce to be compliant with federal requirements and allow state licensed appraisers to participate in federally regulated transactions. The Appraisal Qualifications Board within the Foundation establishes the minimum education and experience requirements as well as the examination

requirements. The Appraisal Practices Board within the Foundation is charged with providing guidance and issuing opinions on recognized valuation methods and techniques.

The following are some of the major issues pertaining to the BREa along with background information concerning the particular issue.

Licensee Education. Prior to licensure, applicants are not required take a course or pass an exam to show fluency in federal and state laws and regulations. Only upon renewal of the licensure must real estate appraisers demonstrate their knowledge of federal and state laws and regulations. Real estate appraiser licenses must be renewed every two years. However, there are two separate CE requirements in order to renew a license. All licensed appraisers must meet minimum CE requirements before renewing their license. A total of 56 hours of CE is required during the four-year CE cycle. In practical terms, this requires a renewal of the 7-hour USPAP course every two years on its own, and a full CE (56 hours) renewal every four years. Generally the requirement is a full CE 56 hour renewal every other two year cycle, with a reduced 7 hour CE renewal cycle in between. CE courses or seminars must cover appraisal related topics including subjects such as land use planning, appraisal computer applications, cost estimating, and green building appraisals.

This bill requires an applicant for a real estate appraiser's license to complete a BREa-approved course and examination testing the applicant on federal and state laws regulating the appraisal profession.

Current Related Legislation. SB 710 (Galgiani) of the current Legislative Session, corrects a drafting error that requires the listing of a company name and a responsible broker's license number on all "team" advertising and instead requires only one or the other to be listed.

STATUS: This bill is pending in the Assembly Committee on Business and Professions.

Prior Related Legislation. SB 706 (Price), Chapter 712, Statutes of 2011, made numerous enforcement enhancements to the former DRE and the former Office of Real Estate Appraisers; required licensing boards to post information about licensees on the Internet, as specified; and made updating and conforming changes.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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